

Local mental health and mental retardation authorities serving as providers

HB 2572 by Truitt (Janek)

DIGEST: HB 2572 would have permitted local mental health and mental retardation authorities to serve both as state contractors and as service providers. Local mental retardation authorities also could have served as providers of intermediate care facility services (ICF-MR) or related waiver services if they were qualified service providers or as providers of last resort.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 2572 is the latest of several efforts over the years to revise the system by which mental health and mental retardation (MHMR) services are provided at the local level. One of the key concerns has been that under the current system, 41 local MHMR authorities have an inherent conflict of interest because they not only control the funds distributed in their local areas, they also provide services. Consumers of MHMR services contend that arrangement has limited their ability to select providers and services.

“House Bill No. 2572 fails to adequately address the conflict, but more importantly it undermines the goals of more effectively delivering services, providing greater options for persons who need services, and creating more opportunity for private providers to participate in the system.

“Current law (Section 533.035 Health and Safety Code) addresses this same concern in a manner that provides greater consumer choice of services and promotes the development of a more effective system of services. This current law also promotes greater participation by private providers. A true market oriented approach is ultimately better for Texans dependent on these services. A market-oriented approach also is better for the taxpayers who fund those services because it puts consumers in better control of the services they receive by affording them greater options. I believe that this current law, when implemented, will build a stronger mental health and mental retardation system with greater choice for consumers.”

RESPONSE: Rep. Vicki Truitt, the bill’s author, said: “Many Texans are disappointed about the Governor’s veto of HB 2572, including consumers, service providers, community leaders throughout the state, and members of the Texas Legislature.

- HB 2572 passed third reading with 130 aye votes in the House, and unanimously in the Senate.
- HB 2572 Conference Committee Report passed in the House with 147 aye votes, and unanimously in the Senate

“HB 2572 was the product of more than a year’s worth of negotiations between private providers and Mental Health and Mental Retardation Centers, i.e., the parties who best know what resources are available at the local level and how they are most effectively delivered. It was enthusiastically supported by the Texas Council of MHMR Centers, the Private Providers Association of Texas and the Association of Retarded Citizens of Texas.

“My greatest concern is that the veto of HB 2572 will damage or destroy the local safety nets for MHMR services. A forced implementation making Centers the 'provider of last resort' can result in a situation that makes their provision of crucial services financially unviable. While I wholeheartedly support the proliferation and success of private providers, they can and routinely do go bankrupt or abruptly leave service areas. In the event that this happens, and the local MHMR center has not been allowed to provide services because there had been a private provider(s) delivering the services, who then would be adequately prepared to step in on a moment’s notice and provide essential services that were abandoned by the private provider?

“The current system has – statewide – some of the best results in the United States, with one of the lowest overall costs to the state. This is because local people direct local resources using local networks of locally provided services. It works well because it is community-based.

“HB 2572 would have enhanced expectations and provided greater accountability of those MHMR centers and authorities whose performance and efficiency need improvement.

“If the Legislature’s intent of HB 2572 (conveyed through its overwhelming passage) is ignored, and the essence of HB 470 (which failed to pass in both the House and the Senate) is enacted by agency rule, there could be significant negative consequences to the vulnerable people and families served by MHMR services throughout the state.

“There seems to be a determined effort at the state level to strip local control and authority and move locally negotiated contracts to the Health and Human Services Commission, which, by the way and according to our own state auditor, has a dismal record of managing contracts.

“I believe the intent of the ‘cookie cutter’ approach to mental health services that ‘HB 470-type rules’ would enable will pave the way for a statewide HMO model of MHMR service delivery. Such action will eliminate local innovation, ownership, and pride in services. It will result in greatly reduced local funding, which currently provides over \$100 million statewide, counting both local government and philanthropic donations. It will also erode the number and quality of service providers, unless provisions are enacted to protect service providers from unilateral rate cuts. Too few providers, or poor quality providers, is detrimental to those who need and depend upon these services.

“Delivery models need not be ‘identical’ throughout the state in order to be effective. In fact, quite the contrary is true and needed to accommodate the variety of characteristics and individual community needs. Local community input and participation is essential for the success of any service model and must not be overridden by state authority.

“HB 2572 would have slowed the implementation of agency and staff-driven initiatives, and forced the assessment of local impacts on communities prior to implementation.

“HB 2572 would have ensured that state money would be used for direct services, rather than funding another layer of administration and administrative costs. The exclusively fee-for-service model the agency has repeatedly said it intends to implement this year will result in an immediate loss of some local services simply because that payment model cannot support some service needs.

“The will of the Legislature, reflecting the desire of the citizens of Texas, should not be ignored or rejected because executive office or agency staff has a different ‘concept’ of how services should be delivered and reimbursed. Concepts are fine, but the practical applicability of such concepts must be considered. New ideas and concepts should be encouraged and are often meritorious, but they should be properly vetted prior to implementation.

“The state’s local MHMR services have been specifically tailored over time to suit the unique needs and characteristics of Texas’ broad and diverse communities. The intimate knowledge, experience, understanding and opinions of local leaders and experts must not be discarded by state bureaucrats. Too much is at stake to risk the erosion, or worse, the collapse of services to one of our state’s most vulnerable populations.

“The governor’s executive order replacing what would have been HB 2572 seems to direct the agency to be cognizant of and respect some of the provisions in HB 2572. I can only hope that the message from the Legislature, as delivered by the overwhelming passage of HB 2572, was received and will be acknowledged by HHSC as it implements the terms of the executive order. Legislators and community leaders will be monitoring its progress and impact.”

Sen. Kyle Janek, the Senate sponsor, said: “HB 2572 is an important piece of legislation that I worked very hard to pass through the Texas Senate. The Heflin amendments to HB 2292 create burdens on local MHMRs that these facilities simply cannot bear. Any changes made to the current funding mechanism need to be carefully thought out and executed only if the infrastructure and technical support needed by these facilities to do so is in place.”

NOTES:

On June 17, Gov. Perry issued Executive Order RP45, which directs HHSC to continue the transition to local health and mental retardation authorities as providers of last resort. It requires HHSC to consider consumer choice, the viability of the safety net, and other factors during the implementation process. HHSC also will request from the attorney general an opinion on the applicability of current law relating to circumstances when a local mental health and mental retardation authority may serve as a provider of services.

HB 2572 was analyzed in Part Two of the May 9 *Daily Floor Report*.